

In the Matter of THE DEMING COMPANY and UNITED STEELWORKERS OF AMERICA (C. I. O.)

Case No. 8-R-1684.—Decided November 25, 1944

Herrington, Huxley & Smith by Messrs. *R. D. Huxley* and *T. L. Jackson*, of Youngstown, Ohio, for the Company.

Mr. Verne Halsey, of Youngstown, Ohio, for the Union.

Mr. Herbert C. Kane, of counsel to the Board.

DECISION

AND

DECISION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Deming Company, Salem, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Arthur Stark, Trial Examiner. Said hearing was held at Salem, Ohio, on November 3, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, an Ohio corporation with its main offices and plant in Salem, Ohio, and sales offices in New York City, is engaged in the manufacture of pumps. During the last 6 months the Company purchased raw materials, consisting principally of pig iron, pig copper, babbitt, and steel outside the State of Ohio of an approximate value of \$30,000. The Company, during the same period, shipped finished

products outside the State of Ohio of an amount in excess of \$1,500,000, which is 90 percent of its total finished products.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act:

IV. THE APPROPRIATE UNIT

The parties agree generally, that a unit consisting of all the production and maintenance employees of the Company, including departmental clerks, production clerks, and watchmen, but excluding office employees, the superintendents, foremen, assistant foremen, and all other supervisory employees would be appropriate. However, the Company would exclude and the Union include the apprentices.

Apprentices: There are 11 apprentices employed by the Company.² The Company always selects its apprentices from among its other employees. Their wages and working conditions are the same generally as those of other production and maintenance employees except for the fact that the apprentices have 4 hours of school on Saturdays. Almost without exception, the apprentices, when they have finished their apprenticeship, remain with the Company. They are then raised to wages commensurate with their training and ability. We shall include them in the unit.³

¹ The Field Examiner reported that the Union submitted 257 membership cards, that the names of 208 persons appearing on the cards were listed on the Company's current pay roll which contained the names of 614 employees in the appropriate unit; and that the cards were dated 240 between January and October 1944, and 17 were undated.

² There are 9 machinist, 1 foundry, and 1 sheet metal, apprentices

³ The fact that these apprentices have each signed a contract with the Company regarding wages and hours, cannot be held to reflect the desires of such employees regarding representation and does not, as contended by the Company, constitute a bar to collective bargaining on their behalf. *Matter of The Gates Rubber Company and Denver Printing Pressmen and Assistants Union No 40, and Denver Typographical Union, No 49, S N L R B 303; Matter of J. I. Case Co., 38 N L R. B 522.*

We find that all production and maintenance employees of the Company, including departmental clerks, production clerks, watchmen, and apprentices, but excluding office employees, superintendents, foremen, assistant foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The Company maintains that all employees who have not been employed by the Company for 1 year are considered temporary. However, there is no probationary period established by the Company in hiring new employees, and the working conditions and rates of pay of those employed more than 1 year and those employed less than 1 year are identical. We shall not, therefore, exclude from eligibility to vote employees who otherwise come within the unit found appropriate herein but who have been employed less than 1 year.

The Company further contends that because of the large number of employees now serving in the armed forces, the election should not be held until they return. We shall follow our usual rule allowing those employees in the armed forces of the United States who present themselves in person at the polls to vote.⁴

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Deming Company, Salem, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections

⁴ *Matter of Mine Safety Appliance Co*, 55 N. L. R. B. 1190.

10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during the said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Steelworkers of America; C. I. O., for the purposes of collective bargaining.